Hickey Electrical Contractors, Inc. *and* Elmer Olson *and* Dale Galvin and International Brotherhood of Electrical Workers, Local Union No. 134, AFL–CIO, Party in Interest. Cases 13–CA–31875 and 13–CA–32080

December 12, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge filed on July 21, 1993,[1] in Case 13–CA–31875 by Elmer Olson, an individual, the General Counsel of the National Labor Relations Board issued a complaint on September 30 against Hickey Electrical Contractors, Inc., the Respondent. The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by discharging Olson on July 13 (1) because he claimed that he did not have to work outside the regularly scheduled working hours without overtime pay, and (2) to discourage employees from engaging in these and other concerted activities.

Upon a charge filed on October 25 in Case 13–CA–32080 by Dale Galvin, an individual, the General Counsel issued a complaint on December 27 against the Respondent. The complaint alleges that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging Galvin on July 13 (1) because he (a) told the Respondent that he was not required to work outside the regularly scheduled working hours without overtime pay, (b) complained to his foreman for not following contract procedures when performing work on Sundays, and (c) told his foreman that he would be reporting the Respondent to the Union for not following the contract procedures when performing work on Sundays, and (2) to discourage employees from engaging in these and other concerted activities.

On December 27, the General Counsel issued an Order consolidating these cases.

On January 6, the Respondent filed its answer in Case 13–CA–32080, admitting in part and denying in part the allegations in the complaint.[2]

On May 31, the Respondent filed with the Board in Washington, D.C., a motion to dismiss complaint and defer to arbitration, with exhibits attached. On June 30, the General Counsel filed a response in opposition to the Respondent's motion. On July 6, the Respondent filed a reply brief in support of its motion. On July 13, the General Counsel filed a response to the Respondent's reply brief.

On July 20, the Board issued an order transferring proceeding to the Board and a Notice to Show Cause why the Respondent's motion should not be granted.

On August 3, 1994, both the General Counsel and the Respondent filed their respective responses to the Notice To Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion to Dismiss Complaint and Defer to Arbitration

A. *Background*

The Respondent admits in its answer to the complaint in Case 13–CA–32080 that it is bound to a collective-bargaining agreement (the contract) between the Union and the Electrical Contractors' Association of the City of Chicago, Inc. (the Association), of which the Respondent is a member. Both the Respondent and the Union have submitted, as attachments to their pleadings, copies of the contract that was in effect at the time of the relevant events.

Although the contract contains a grievance-arbitration procedure, it appears from the pleadings and their attachments that no formal grievances have been filed in connection with the Charging Parties' discharges. However, the General Counsel has submitted a June 15 letter from the Union to the General Counsel, in which the Union states that if the Board defers the pending cases to the grievance procedure, the Union "will then proceed with these grievances." The Union further states in this letter that "[i]f, as with all grievances, these grievances are settled amongst the parties, [the Union] would consider these grievances settled."

The General Counsel has also submitted a subsequent, July 6 letter from the Union's attorney to the General Counsel, in which the Union states in pertinent part that:

[1] Dates are between July 21, 1993 through July 20, 1994, unless otherwise stated.

[2] Although there is no assertion that the Respondent has failed to file an answer to the complaint in case 13–CA–31875, no such answer is contained or mentioned in the record.

> [T]he agents of [the Union] are not willing to arbitrate in the absence of a specific request and waiver from both Elmer Olson and Dale Galvin concerning their willingness to arbitrate the matters rather than have the N.L.R.B. hearing that is scheduled in their cases.[3] Since neither Mr. Olson nor Mr. Galvin have furnished the requested waiver to [the Union], the Union cannot agree that their statutory rights be abrogated.

B. *Contentions of the General Counsel and the Respondent*

The General Counsel asserts that deferral is inappropriate under these circumstances because the Union has "declined to give assurance of its willingness to process the grievances up to and including arbitration," and because "the Union is unwilling to commit to the arbitration of grievances on behalf of the individual Charging Parties."

The General Counsel cites only *Able Bus, Inc.*, 279 NLRB 457 (1986), as precedent in support of this position. In that case, however, there were no exceptions filed to the administrative law judge's denial of the employer's request for deferral. Consequently, the deferral issue in *Able Bus* was not before the Board, and that case therefore has no precedential effect on the present deferral issue.

The Respondent contends in essence that deferral of this proceeding to the contractual grievance-arbitration procedures is appropriate under the standards for deferral set out in *United Technologies*, 268 NLRB 557 (1984). The Respondent, citing *United Aircraft*, 204 NLRB 879 (1973), asserts that the Board does not require that a grievance be filed and pending in order for the Board to defer to contractual grievance-arbitration procedures. Thus, the Respondent urges that deferral is not barred by the fact that neither of the Charging Parties nor the Union has filed a grievance.[4] Finally, citing *Consolidated Freightways Corp.*, 288 NLRB 1252 (1988), enfd. sub nom. *Hammontree v. NLRB*, 925 F.2d 1486 (D.C. Cir. 1991), and also relying on *United Beef*, 272 NLRB 66 (1984), the Respondent contends that deferral is not precluded by the fact that the individual Charging Parties have decided not to exhaust the parties' contractual grievance-arbitration procedures.

[3] The Board's July 20, 1994 Notice to Show Cause postponed the scheduled July 21 unfair labor practice hearing indefinitely.

[4] The Respondent has expressed its willingness to arbitrate these disputes pursuant to the parties' contractual grievance-arbitration provisions, and to waive any timeliness or procedural defenses under the contract.

C. *Conclusion*

In consideration of the entire record and the above contentions, we conclude the Respondent's motion to dismiss complaint and defer to arbitration should be granted. Accordingly, as set forth in the following Order, we shall grant the motion, dismiss the complaints, and defer the proceeding to the parties' contractual grievance-arbitration procedures.

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Hickey Electrical Contractors, Inc., is an Illinois corporation, with an office and place of business in Oak Forest, Illinois, where it is engaged in electrical construction for industrial and commercial properties. During the calendar year ending December 31, 1992, the Respondent, in conducting its above business operations, purchased and received at its Oak Forest, Illinois facility goods valued in excess of $50,000 directly from points outside the State of Illinois. At all material times the Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes and policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local Union No. 134, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

CONCLUSION OF LAW

The unfair labor practice allegations in the complaints should be deferred to the grievance-arbitration procedure established by the parties' collective-bargaining agreement.

ORDER

The Respondent's Motion to dismiss the complaints and to defer this proceeding to the parties' contractual grievance-arbitration provisions is granted and the complaints are dismissed, provided that:

Jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration upon a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration proce-

dures have not been fair and regular or have reached a result which is repugnant to the Act.

Dated, Washington, D.C. December 12, 1994

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD